IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7050 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSHADBHAI NATHALAL PANDYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7050 of 2001

MR SHAKEEL A QURESHI for Petitioner No. 1

MR VM PANCHOLI, APP, for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/2001

ORAL JUDGEMENT

1. The petitioner herein, who is accused No.1 in a complaint lodged by one Hemlataben Bhanjibhai for offences punishable under Sections 406, 420, 465, 466, 417, 418, 475 and 114 of Indian Penal Code, seeks

quashment of a subsequent F.I.R. lodged by Taluka Development Officer, Bhesana, one Parbatbhai Mohanbhai Vaghasiya, vide C.R. No.385 of 2000 with Junagadh City "B" Division Police Station.

2. The substance of both the complaints is that the petitioner, by joining hands with one Bhikhabhai Mohanbhai, forged copies of revenue record and also played some mischief in the original revenue record and duped the complainant of the first F.I.R.-Hemlataben by representing that Bhikhabhai Mohanbhai is the owner of survey No.10 admeasuring 17 acres and 22 Gunthas of village Hadmatiya whereas, in fact, he was not the owner. An altogether different land was shown and that is how the lady was made to part Rs.25,000/- and, subsequently, no document is executed and it is found that Bhikhabhai Mohanbhai was not the owner of the land and the man shown as Bhikhabhai Mohanbhai was a different person altogether. On basis of this F.I.R. lodged by Hemlataben, departmental action was initiated by the revenue authority and, ultimately, having found that offence is committed, the second F.I.R. is lodged by Shri P.M. Vaghasiya, the Taluka Development Officer, Bhesana, for that very transaction, giving some more details.

3. The petitioner seeks quashment of the second F.I.R., i.e. C.R. No.385 of 2000 of Junagadh City "B" Division Police Station dated December 28, 2000.

4. Learned advocate Mr. Kureshi places reliance on the decision of the Apex Court in T.T. Antony v. State of Kerala and Ors., 2001 AIR SCW 2571 wherein it has been held that there can be no second F.I.R. in respect of the same cognizable offence, same incident or occurrence. In the case before the Apex Court, firstly, an F.I.R. was lodged and investigation was made on the basis of that F.I.R. It was in respect of an incident of police firing on occasion of visit of a Minister. While that investigation was on, a report was submitted by the Inquiry Commission. the said report came to be accepted by the Government and the police, therefore, registered subsequent F.I.R. initiating fresh investigation. It was found on comparison of the two F.I.Rs. that date and place of occurrence were the same. The narration of events was also the same and, therefore, Their Lordships observed that subsequent F.I.R. is the second F.I.R. Its recording was irregular and a fresh investigation by the investigating agency was unwarranted and illegal. Their Lordships observed that subjecting citizen to a fresh investigation on basis of such second F.I.R. is an

abuse of power and it would be a fit case for exercise of powers under Section 482 of the Code of Criminal Procedure or Article 226/227 of the Constitution.

5. The facts of the present case are very similar to the facts of the case before Their Lordships in the above referred case. This case would, therefore, be governed by the said decision. The petition deserves to be accepted and the same is accepted. The F.I.R. lodged by Taluka Development Officer, Bhesana, before Junagadh City "B" Division Police Station vide C.R. No.385 of 2000 is hereby quashed and set aside. Rule is made absolute.

6. Direct service is permitted.

[A.L. DAVE, J.]

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